

SENATE BILL No. 23

DIGEST OF INTRODUCED BILL

Citations Affected: IC 22-4.

Synopsis: Unemployment contribution rates. Delays from January 1, 2010, to January 1, 2011, changes in the taxable wage base and employer contribution rates for the unemployment compensation system.

Effective: January 1, 2010 (retroactive).

**Hershman, Kenley, Kruse,
Charbonneau**

November 17, 2009, read first time and referred to Committee on Tax and Fiscal Policy.

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Introduced

Second Regular Session 116th General Assembly (2010)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2009 Regular and Special Sessions of the General Assembly.

SENATE BILL No. 23

A BILL FOR AN ACT to amend the Indiana Code concerning labor and safety.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 22-4-4-2, AS AMENDED BY P.L.175-2009,
2 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JANUARY 1, 2010 (RETROACTIVE)]: Sec. 2. (a) Except as
4 otherwise provided in this section, "wages" means all remuneration as
5 defined in section 1 of this chapter paid to an individual by an
6 employer, remuneration received as tips or gratuities in accordance
7 with Sections 3301 and 3102 et seq. of the Internal Revenue Code, and
8 includes all remuneration considered as wages under Sections 3301 and
9 3102 et seq. of the Internal Revenue Code. However, the term shall not
10 include any amounts paid as compensation for services specifically
11 excluded by IC 22-4-8-3 or IC 22-4-8-3.5 from the definition of
12 employment as defined in IC 22-4-8-1 and IC 22-4-8-2. The term shall
13 include, but not be limited to, any payments made by an employer to an
14 employee or former employee, under order of the National Labor
15 Relations Board, or a successor thereto, or agency named to perform
16 the duties thereof, as additional pay, back pay, or for loss of
17 employment, or any such payments made in accordance with an

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1 agreement made and entered into by an employer, a union, and the
2 National Labor Relations Board.

3 (b) The term "wages" shall not include the following:

4 (1) That part of remuneration which, after remuneration equal to:

5 (A) seven thousand dollars (\$7,000), has been paid in a
6 calendar year to an individual by an employer or the
7 employer's predecessor with respect to employment during any
8 calendar year that begins after December 31, 1982, and before
9 January 1, ~~2010~~; **2011**; or

10 (B) nine thousand five hundred dollars (\$9,500), has been paid
11 in a calendar year to an individual by an employer or the
12 employer's predecessor for employment during a calendar year
13 that begins after December 31, ~~2009~~; **2010**;

14 unless that part of the remuneration is subject to a tax under a
15 federal law imposing a tax against which credit may be taken for
16 contributions required to be paid into a state unemployment fund.
17 For the purposes of this subdivision, the term "employment" shall
18 include service constituting employment under any employment
19 security law of any state or of the federal government. However,
20 nothing in this subdivision shall be taken as an approval or
21 disapproval of any related federal legislation.

22 (2) The amount of any payment (including any amount paid by an
23 employer for insurance or annuities or into a fund to provide for
24 any such payment) made to, or on behalf of, an individual or any
25 of the individual's dependents under a plan or system established
26 by an employer which makes provision generally for individuals
27 performing service for it (or for such individuals generally and
28 their dependents) or for a class or classes of such individuals (or
29 for a class or classes of such individuals and their dependents) on
30 account of:

31 (A) retirement;

32 (B) sickness or accident disability;

33 (C) medical or hospitalization expenses in connection with
34 sickness or accident disability; or

35 (D) death.

36 (3) The amount of any payment made by an employer to an
37 individual performing service for it (including any amount paid
38 by an employer for insurance or annuities or into a fund to
39 provide for any such payment) on account of retirement.

40 (4) The amount of any payment on account of sickness or accident
41 disability, or medical or hospitalization expenses in connection
42 with sickness or accident disability made by an employer to, or on

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behalf of, an individual performing services for it and after the expiration of six (6) calendar months following the last calendar month in which the individual performed services for such employer.

(5) The amount of any payment made by an employer to, or on behalf of, an individual performing services for it or to the individual's beneficiary:

(A) from or to a trust exempt from tax under Section 401(a) of the Internal Revenue Code at the time of such payment unless such payment is made to an individual performing services for the trust as remuneration for such services and not as a beneficiary of the trust; or

(B) under or to an annuity plan which, at the time of such payments, meets the requirements of Section 401(a)(3), 401(a)(4), 401(a)(5), and 401(a)(6) of the Internal Revenue Code.

(6) Remuneration paid in any medium other than cash to an individual for service not in the course of the employer's trade or business.

(7) The amount of any payment (other than vacation or sick pay) made to an individual after the month in which the individual attains the age of sixty-five (65) if the individual did not perform services for the employer in the period for which such payment is made.

(8) The payment by an employer (without deduction from the remuneration of the employee) of the tax imposed upon an employee under Sections 3101 et seq. of the Internal Revenue Code (Federal Insurance Contributions Act).

SECTION 2. IC 22-4-10-3, AS AMENDED BY P.L.175-2009, SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2010 (RETROACTIVE)]: Sec. 3. (a) This subsection applies before January 1, ~~2010~~ **2011**. Except as provided in section 1(b) through 1(e) of this chapter, each employer shall pay contributions equal to five and six-tenths percent (5.6%) of wages, except as otherwise provided in IC 22-4-11-2, IC 22-4-11-3, IC 22-4-11.5, and IC 22-4-37-3.

(b) This subsection applies after December 31, ~~2009~~ **2010**. Except as provided in section 1(b) through 1(e) of this chapter, each employer shall pay contributions equal to twelve percent (12%) of wages, except as otherwise provided in IC 22-4-11-2, IC 22-4-11-3.5, 22-4-11.5, and IC 22-4-37-3.

SECTION 3. IC 22-4-11-2, AS AMENDED BY P.L.175-2009,

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SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2010 (RETROACTIVE)]: Sec. 2. (a) Except as provided in IC 22-4-11.5, the department shall for each year determine the contribution rate applicable to each employer.

(b) The balance shall include contributions with respect to the period ending on the computation date and actually paid on or before July 31 immediately following the computation date and benefits actually paid on or before the computation date and shall also include any voluntary payments made in accordance with IC 22-4-10-5 or IC 22-4-10-5.5:

(1) for each calendar year, an employer's rate shall be determined in accordance with the rate schedules in section 3.3 or 3.5 of this chapter; and

(2) for each calendar year, an employer's rate shall be two and seven-tenths percent (2.7%) before January 1, ~~2010~~, **2011**, and two and five-tenths percent (2.5%) after December 31, ~~2009~~, **2010**, except as otherwise provided in IC 22-4-37-3, unless and until:

(A) the employer has been subject to this article throughout the thirty-six (36) consecutive calendar months immediately preceding the computation date; and

(B) there has been some annual payroll in each of the three (3) twelve (12) month periods immediately preceding the computation date.

(c) This subsection applies before January 1, ~~2010~~, **2011**. In addition to the conditions and requirements set forth and provided in subsection (b)(2)(A) and (b)(2)(B), an employer's rate shall not be less than five and six-tenths percent (5.6%) unless all required contribution and wage reports have been filed within thirty-one (31) days following the computation date and all contributions, penalties, and interest due and owing by the employer or the employer's predecessors for periods prior to and including the computation date have been paid:

(1) within thirty-one (31) days following the computation date; or

(2) within ten (10) days after the department has given the employer a written notice by registered mail to the employer's last known address of:

(A) the delinquency; or

(B) failure to file the reports;

whichever is the later date.

The board or the board's designee may waive the imposition of rates under this subsection if the board finds the employer's failure to meet the deadlines was for excusable cause. The department shall give

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1 written notice to the employer before this additional condition or
2 requirement shall apply.

3 (d) This subsection applies after December 31, ~~2009~~ **2010**. In
4 addition to the conditions and requirements set forth and provided in
5 subsection (b)(2)(A) and (b)(2)(B), an employer's rate shall not be less
6 than twelve percent (12%) unless all required contributions and wage
7 reports have been filed within thirty-one (31) days following the
8 computation date and all contributions, penalties, and interest due and
9 owing by the employer or the employer's predecessor for periods
10 before and including the computation date have been paid:

- 11 (1) within thirty-one (31) days following the computation date; or
12 (2) within ten (10) days after the department has given the
13 employer a written notice by registered mail to the employer's last
14 known address of:

15 (A) the delinquency; or

16 (B) failure to file the reports;

17 whichever is the later date. The board or the board's designee may
18 waive the imposition of rates under this subsection if the board finds
19 the employer's failure to meet the deadlines was for excusable cause.
20 The department shall give written notice to the employer before this
21 additional condition or requirement shall apply.

22 (e) However, if the employer is the state or a political subdivision
23 of the state or any instrumentality of a state or a political subdivision,
24 or any instrumentality which is wholly owned by the state and one (1)
25 or more other states or political subdivisions, the employer may
26 contribute at a rate of:

27 (1) one percent (1%), before January 1, ~~2010~~ **2011**; or

28 (2) one and six-tenths percent (1.6%), after December 31, ~~2009~~;
29 **2010**;

30 until it has been subject to this article throughout the thirty-six (36)
31 consecutive calendar months immediately preceding the computation
32 date.

33 (f) On the computation date every employer who had taxable wages
34 in the previous calendar year shall have the employer's experience
35 account charged with the amount determined under the following
36 formula:

37 STEP ONE: Divide:

38 (A) the employer's taxable wages for the preceding calendar
39 year; by

40 (B) the total taxable wages for the preceding calendar year.

41 STEP TWO: Multiply the quotient determined under STEP ONE
42 by the total amount of benefits charged to the fund under section

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1 of this chapter.

(g) One (1) percentage point of the rate imposed under subsection (c) or (d), or the amount of the employer's payment that is attributable to the increase in the contribution rate, whichever is less, shall be imposed as a penalty that is due and shall be deposited upon collection into the special employment and training services fund established under IC 22-4-25-1. The remainder of the contributions paid by an employer pursuant to the maximum rate shall be:

(1) considered a contribution for the purposes of this article; and

(2) deposited in the unemployment insurance benefit fund established under IC 22-4-26.

SECTION 4. IC 22-4-11-3, AS AMENDED BY P.L.175-2009, SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2010 (RETROACTIVE)]: Sec. 3. (a) The applicable schedule of rates for calendar years before January 1, ~~2010~~, **2011**, shall be determined by the ratio resulting when the balance in the fund as of the determination date is divided by the total payroll of all subject employers for the immediately preceding calendar year. Schedule A, B, C, or D, appearing on the line opposite the fund ratio in the schedule below, shall be applicable in determining and assigning each employer's contribution rate for the calendar year immediately following the determination date. For the purposes of this subsection, "total payroll" means total remuneration reported by all contributing employers as required by this article and does not include the total payroll of any employer who elected to become liable for payments in lieu of contributions (as defined in IC 22-4-2-32). For the purposes of this subsection, "subject employers" means those employers who are subject to contribution.

FUND RATIO SCHEDULE

When the Fund Ratio Is:

As Much As	But Less Than	Applicable Schedule
	1.0%	A
1.0%	1.5%	B
1.5%	2.25%	C
2.25%		D

(b) Except as provided in subsection (c), the applicable schedule of rates for calendar years after December 31, ~~2009~~, **2010**, shall be determined by the ratio resulting when the balance in the fund as of the determination date is divided by the total payroll of all subject employers for the immediately preceding calendar year. Schedules A through I appearing on the line opposite the fund ratio in the schedule

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below are applicable in determining and assigning each employer's contribution rate for the calendar year immediately following the determination date. For purposes of this subsection, "total payroll" means total remuneration reported by all contributing employers as required by this article and does not include the total payroll of any employer who elected or is required to become liable for payments in lieu of contributions (as defined in IC 22-4-2-32). For purposes of this subsection, "subject employers" means those employers who are subject to contribution.

FUND RATIO SCHEDULE

When the Fund Ratio Is:

As Much As	But Less Than	Applicable Schedule
	0.2%	A
0.2%	0.4%	B
0.4%	0.6%	C
0.6%	0.8%	D
0.8%	1.0%	E
1.0%	1.2%	F
1.2%	1.4%	G
1.4%	1.6%	H
1.6%		I

(c) For calendar year ~~2010~~ **2011** only, Schedule B applies in determining and assigning each employer's contribution rate.

(d) Any adjustment in the amount charged to any employer's experience account made subsequent to the assignment of rates of contributions for any calendar year shall not operate to alter the amount charged to the experience accounts of any other base-period employers.

SECTION 5. IC 22-4-11-3.3, AS AMENDED BY P.L.175-2009, SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2010 (RETROACTIVE)]: Sec. 3.3. (a) For calendar years after 2001 and before ~~2010~~, **2011**, if the conditions of section 2 of this chapter are met, the rate of contributions shall be determined and assigned, with respect to each calendar year, to employers whose accounts have a credit balance and who are eligible therefore according to each employer's credit reserve ratio. Each employer shall be assigned the contribution rate appearing in the applicable schedule A, B, C, D, or E on the line opposite the employer's credit reserve ratio as set forth in the rate schedule below:

RATE SCHEDULE FOR ACCOUNTS WITH CREDIT BALANCES

When the Credit Reserve Ratio Is:

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	As	But	Rate Schedules				
	Much	Less	(%)				
	As	Than	A	B	C	D	E
1	3.00		1.10	0.10	0.10	0.10	0.15
2	2.80	3.00	1.30	0.30	0.10	0.10	0.15
3	2.60	2.80	1.50	0.50	0.10	0.10	0.15
4	2.40	2.60	1.70	0.70	0.30	0.10	0.20
5	2.20	2.40	1.90	0.90	0.50	0.10	0.20
6	2.00	2.20	2.10	1.10	0.70	0.30	0.40
7	1.80	2.00	2.30	1.30	0.90	0.50	0.60
8	1.60	1.80	2.50	1.50	1.10	0.70	0.80
9	1.40	1.60	2.70	1.70	1.30	0.90	1.00
10	1.20	1.40	2.90	1.90	1.50	1.10	1.20
11	1.00	1.20	3.10	2.10	1.70	1.30	1.40
12	0.80	1.00	3.30	2.30	1.90	1.50	1.60
13	0.60	0.80	3.50	2.50	2.10	1.70	1.80
14	0.40	0.60	3.70	2.70	2.30	1.90	2.00
15	0.20	0.40	3.90	2.90	2.50	2.10	2.20
16	0.00	0.20	4.10	3.10	2.70	2.30	2.40

(b) For calendar years after 2001 and before ~~2010~~, **2011**, if the conditions of section 2 of this chapter are met, the rate of contributions shall be determined and assigned, with respect to each calendar year, to employers whose accounts have a debit balance and who are eligible therefore according to each employer's debit reserve ratio. Each employer shall be assigned the contribution rate appearing in the applicable schedule A, B, C, D, or E on the line opposite the employer's debit reserve ratio as set forth in the rate schedule below:

RATE SCHEDULE FOR ACCOUNTS
WITH DEBIT BALANCES

When the Debit Reserve Ratio Is:

	As	But	Rate Schedules				
	Much	Less	(%)				
	As	Than	A	B	C	D	E
1		1.50	4.40	4.30	4.20	4.10	5.40
2	1.50	3.00	4.70	4.60	4.50	4.40	5.40
3	3.00	4.50	5.00	4.90	4.70	4.70	5.40
4	4.50	6.00	5.30	5.20	5.10	5.00	5.40
5	6.00		5.60	5.50	5.40	5.40	5.40

SECTION 6. IC 22-4-11-3.5, AS ADDED BY P.L.175-2009, SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2010 (RETROACTIVE)]: Sec. 3.5. (a) For calendar years after ~~2009~~, **2010**, if the conditions of section 2 of this chapter are

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met, the rate of contributions shall be determined and assigned, with respect to each calendar year, to employers whose accounts have a credit balance and who are therefore eligible according to each employer's credit reserve ratio. Each employer shall be assigned the contribution rate appearing in the applicable schedule A through I on the line opposite the employer's credit reserve ratio as set forth in the rate schedule below:

RATE SCHEDULE FOR ACCOUNTS
WITH CREDIT BALANCES

When the Credit Reserve Ratio Is:

As	But	Rate Schedules					
Much	Less	(%)					
As	Than	A	B	C	D	E	
3.00		0.75	0.70	0.70	0.60	0.50	
2.80	3.00	1.00	0.90	0.90	0.80	0.70	
2.60	2.80	1.30	1.20	1.10	1.00	0.90	
2.40	2.60	1.60	1.50	1.40	1.30	1.20	
2.20	2.40	1.90	1.80	1.70	1.50	1.40	
2.00	2.20	2.20	2.00	1.90	1.80	1.60	
1.80	2.00	2.50	2.30	2.20	2.00	1.80	
1.60	1.80	2.80	2.60	2.40	2.20	2.00	
1.40	1.60	3.10	2.90	2.70	2.50	2.30	
1.20	1.40	3.40	3.20	3.00	2.70	2.50	
1.00	1.20	3.70	3.40	3.20	3.00	2.70	
0.80	1.00	4.00	3.70	3.50	3.20	2.90	
0.60	0.80	4.30	4.00	3.70	3.40	3.10	
0.40	0.60	4.60	4.30	4.00	3.70	3.40	
0.20	0.40	4.90	4.60	4.30	3.90	3.60	
0.00	0.20	5.20	4.80	4.50	4.20	3.80	

RATE SCHEDULE FOR ACCOUNTS
WITH CREDIT BALANCES

When the Credit Reserve Ratio Is:

As	But	Rate Schedules				
Much	Less	(%)				
As	Than	F	G	H	I	
3.00		0.40	0.40	0.30	0.00	
2.80	3.00	0.60	0.50	0.40	0.00	
2.60	2.80	0.80	0.70	0.60	0.10	
2.40	2.60	1.10	1.00	0.90	0.10	
2.20	2.40	1.30	1.20	1.00	0.10	
2.00	2.20	1.40	1.20	1.00	0.10	
1.80	2.00	1.60	1.40	1.20	0.10	

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1	1.60	1.80	1.80	1.60	1.40	0.20
2	1.40	1.60	2.10	1.90	1.70	0.20
3	1.20	1.40	2.20	2.00	1.70	0.20
4	1.00	1.20	2.40	2.10	1.80	0.20
5	0.80	1.00	2.60	2.30	2.00	0.20
6	0.60	0.80	2.80	2.50	2.20	0.20
7	0.40	0.60	3.10	2.80	2.40	0.30
8	0.20	0.40	3.20	2.80	2.40	0.30
9	0.00	0.20	3.40	3.00	2.60	0.30

(b) For calendar years after ~~2009~~, **2010**, if the conditions of section 2 of this chapter are met, the rate of contributions shall be determined and assigned, with respect to each calendar year, to employers whose accounts have a debit balance and who are therefore eligible according to each employer's debit reserve ratio. Each employer shall be assigned the contribution rate appearing in the applicable schedule A through I on the line opposite the employer's debit reserve ratio as set forth in the rate schedule below:

RATE SCHEDULE FOR ACCOUNTS
WITH DEBIT BALANCES

When the Debit Reserve Ratio Is:

As	But	Rate Schedules					
Much	Less	(%)					
As	Than	A	B	C	D	E	
0.00	1.50	6.75	6.30	5.90	5.40	4.90	
1.50	3.00	7.00	6.50	6.10	5.60	5.10	
3.00	4.50	7.25	6.70	6.30	5.80	5.30	
4.50	6.00	7.50	7.00	6.50	6.00	5.50	
6.00	8.00	7.75	7.20	6.70	6.20	5.70	
8.00	10.00	8.25	7.70	7.20	6.60	6.00	
10.00	12.00	8.75	8.10	7.60	7.00	6.40	
12.00	14.00	9.25	8.60	8.00	7.40	6.80	
14.00	16.00	9.75	9.10	8.50	7.80	7.10	
16.00		10.20	9.50	8.90	8.20	7.40	

RATE SCHEDULE FOR ACCOUNTS
WITH DEBIT BALANCES

When the Debit Reserve Ratio Is:

As	But	Rate Schedules				
Much	Less	(%)				
As	Than	F	G	H	I	
0.00	1.50	4.40	3.90	3.40	0.40	
1.50	3.00	4.60	4.10	3.60	0.40	
3.00	4.50	4.80	4.30	3.80	0.40	



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1	4.50	6.00	4.90	4.40	3.80	0.40
2	6.00	8.00	5.10	4.50	3.90	0.40
3	8.00	10.00	5.40	4.80	4.20	0.50
4	10.00	12.00	5.80	5.20	4.50	0.50
5	12.00	14.00	6.10	5.40	4.70	0.50
6	14.00	16.00	6.40	5.70	5.00	0.50
7	16.00		6.70	6.00	5.40	5.40

8 SECTION 7. **An emergency is declared for this act.**

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